

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www. merc.gov.in

Case No. 193 of 2017
Dated: 16 January, 2018

CORAM: Shri. Anand B. Kulkarni, Chairperson

In the matter of
Petition of Gadre Marine Export under Section 86(1) (f) read with 86(1) (c) of the
Electricity Act, 2003 for adjudication of disputes that have arisen between the Petitioner
No. 1, M/s. Gadre Marine Export and Maharashtra State Electricity Distribution
Company Limited arising out of the Energy Purchase Agreement dated 9 November,
2011.

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| 1) M/S. Gadre Marine Export (GME) |Petitioners |
| 2) Gadre Marine Export Private Limited (GMEPL) | |
| 3) Maharashtra State Electricity Distribution Company Limited (MSEDCL) | |
| 4) ,Industry Energy and Labor Department , Government of Maharashtra (GoM) | |
| 5) Maharashtra Energy Development Agency (MEDA) | ... Respondent |

Appearance

For GME	: Smt. Deepa Chavan (Adv)
	Smt. Jyoti Singh Laxmi Busia(Adv)
For GMEPL	: Not present
For MSEDCL	: Shri.Ashish Singh. (Adv.)
For MEDA	: Shri. Manoj Pise.(Rep.)
For Consumer Representatives	: Not present

Daily Order

Heard the Advocates and Representatives of the Petitioners and Respondents

Advocate of GME stated that;

1. It is Small Hydro Electric Project generator having capacity of 1x1.5 MW at Ghonsari, Tal. Kankavali. The project was allotted to it as Captive Power Plant

(CPP) under the Policy of Government of Maharashtra Water Resource Department (GoMWRD) dated 15 September, 2005. It has invested large amount for developing this project. This Policy of GoMWRD specified that Independent Power Plant (IPP)s and CPPs are free to change their option in due course of time and the rationale for this seems to be a mismatch in terms of energy generated and energy used for self use. Further the clause A-15 under this Policy about the Sale of Power provided that MSEDCL shall have the first right of refusal for Sale of power which was subsequently deleted as per the dispensation given by the Commission in its Order dated 7 November, 2007 in Case No 85 of 2006.

2. After Commissioning of the Project on 3 July, 2010 GME has first entered into short term Energy Procurement Agreement (EPA) for 8 months from 9 September, 2010 without any difficulty. EPA has been further extended for 6 months from 8 March, 2011. At the time of its request for further extension of 9 months from 1 September 2011 to 31 May, 2012, MSEDCL refused and asked it to execute long term EPA for a period of 35 years at Preferential Tariff as per the Commission's Generic RE Tariff Order dated 14 July, 2010 in Case No 20 of 2010..
3. On the request of its change of option from IPP to CPP. MSEDCL in reply had stated that it couldn't terminate the Agreement in between them and further stated that the GoM Policy, 2015 was prospective and was for those projects which came up under that Policy.
4. MEDA in its reply dated 15 January, 2018 to the Petition supported the change of option which is crucial in this Case.
5. The synopsis of the EPA of tenure of 35 years, states that the project was identified under the existing policy of GoMWRD and that GME has requested to extend EPA for 9 months from 1 September, 2011 to 1 June, 2012 but it has been asked to enter into Long Term EPA for a period of 35 years as per RE Tariff Order dated 14 July, 2010 in Case No 20 of 2010 under the provisions of RE Tariff Regulations, 2010.
6. Order under Case No 200 of 2014 referred by MSEDCL was for Wind power. It is necessary to mention that Wind Power Projects and Small Hydro Project (SHP)s has major differences. Furthermore the Letter of Intent (LoI) was issued by GoMWRD on 6 December, 2005 to it which covered under GoMWRD Policy dated 15 September, 2005. As far as 2008 Policy concerned, it was silent about these matters.

7. Change of option from CPP to IPP or vice-versa was permitted under GoMWRD Policy 2005 and 2008 and termination issue was not dealt under those policies.

Advocate of MSEDCL stated that;

1. It has entered into the two short term EPAs of 8 months in year 2010 and of 6 months in year 2011. In 2011 another request for extending EPA for 9 months was made by GME. In this regard MSEDCL has informed that as per the provisions of RE Tariff Regulations, 2010 the life of the SHP' was of 35 years, therefore GME has to enter into a long term EPA of 35 years. In response to that GME vide its letter dated 29 August, 2011 have confirmed for execution of EPA for 35 years effective from 1 September, 2011.
2. Thereafter after availing the benefits of EPA with Levellised Tariff of Rs 4.26 per unit for about four and half years this dispute arosed. GME has not mentioned the benefits of levellised tariff in its Petition. In case of CPP, the question of levellised tariff couldn't arise and the electricity would be saled to MSEDCL with generic tariff in that case.
3. MSEDCL is paying approximately 2 Crore every year and the approximate cost of the project might be 7-8 Crore which GME might have recovered till date.
4. Commissioning date of the project was 3 July, 2010 which means that it was governed by RE Tariff Regulations, 2010 and subsequent RE Generic Tariff Orders issued by the Commission.
5. GoM's Policy, 2015 subclause 8.2 provides an option to terminate existing PPA with MSEDCL and option of open access if desired by RE projects. Such an option was not applicable as 2015 policy was not overriding the 2008 policy, wherein this option was not permitted.
6. GME got approval of the project as CPP on 13 March, 2006 and thereafter it again approached GoM and changed its status from CPP to IPP on 31 December, 2010. Now GME again requesting to change its status from IPP to CPP. MSEDCL in this context has concern about how many times GME going to change its status.
7. MSEDCL highlighted the Commission's Order dated 26 October, 2015 in Case No 200 of 2014 in the same context but about wind Power. Abstract of the same is as follows

“9. Under the Wind Energy Order, the decision of whether or not to sell its power to MSEDCL (or other Distribution Licensees) rather than to other parties or for self-use was entirely the Wind Energy Generator’s prerogative. That Order also laid down the EPA period. The EPA period (13 years in the present case) was less than the Project life. It was fixed by the Commission considering the period required for repayment of loan by the Generator and recouping of its investment (with some additional time to account for contingencies arising from uncertainties in wind generation); the need to strike a balance with the interests of consumers considering the preferential Tariff; and so as not to tie the Generator down to sale to a Licensee for the entire Project life. JFPL exercised this prerogative and entered into EPAs with MSEDCL at the preferential Tariff. The Commission is of the view that directing premature termination of the EPAs, which JFPL had entered into at its own option, now that it no longer suits it and inspite of MSEDCL’s objection would subvert the principles of the Wind Energy Order and the contract between the Parties, and that there is no justification to do so. It also notes that both the Wind Tariff Order and the subsequent retail Tariff Orders in respect of MSEDCL consumers (now resulting in a higher tariff payable by JFPL for the power supplied by MSEDCL) have been issued after an extensive process of public consultation.”

8. As such power purchase is for fulfillment of RPO targets, if GME is ready to deposit the amount of power purchase for 27 years with MSEDCL, then it will purchase REC’s and would terminate the EPA immediately. Further the EA, 2003 also provides for arbitration under Section 86 (1) (f).
9. Without prejudice, MSEDCL denies the stand of its highness as contended by GME. GME entered into the EPA and availed of preferential and in between want to terminate the same then there would not be any sanctity to the EPA and would be barred by the doctrine of Promissory Estoppel.

MEDA Submission;

MEDA states that change of option from IPP to CPP stands to be accepted.

Case is reserved for Order.

Sd/-
(Anand B. Kulkarni)
Chairperson